



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Introduce Ordinance Amending Lodi Municipal Code Chapter 5.32 "Massage Establishments" by Repealing and Reenacting Section 5.32.010 "Definitions"

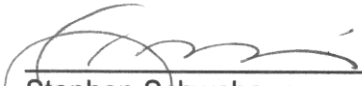
MEETING DATE: July 2, 2008

PREPARED BY City Attorney

RECOMMENDED ACTION: Introduce Ordinance Amending Lodi Municipal Code Chapter 5.32 "Massage Establishments" by repealing and reenacting Section 5.32.010 "Definitions."

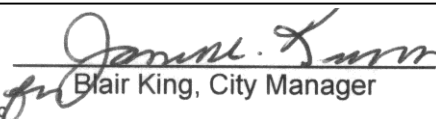
BACKGROUND INFORMATION: Since the new massage ordinance was enacted in 2007, it has come to staffs attention that it is common practice for salon and spa patrons to receive a hand, calf and foot massage in connection with a manicure or pedicure. The current definition of massage in the City's Municipal Code could be interpreted to require a manicurist to obtain a City massage technician permit to perform such a massage. The Police Department believes no regulation is needed for this type of service since it is provided in an open area of a salon or spa and has not been the subject of citizen complaints. Accordingly, staff recommends adoption of the proposed revision to clarify that the ordinance does not apply to manicure or pedicure services performed in an open area of a salon or spa by a manicurist licensed by the California Board of Barbering and Cosmetology.

FISCAL IMPACT: Not applicable.

For: 

Stephen Schwabauer
Lodi City Attorney

APPROVED:


Blair King, City Manager

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
LODI AMENDING LODI MUNICIPAL CODE CHAPTER 5.32
“MASSAGE ESTABLISHMENTS” BY REPEALING AND
REENACTING SECTION 5.32.010 “DEFINITIONS”

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LODI AS FOLLOWS:

SECTION 1. Lodi Municipal Code Title 5.32 “Massage Establishments” is hereby amended by repealing and reenacting Chapter 5.32.010 “Definitions” to read as follows:

5.32.010 Definitions.

Unless the particular provision or the context otherwise requires, the definitions and provisions contained in this section shall govern the construction, meaning, and application of words and phrases used in this Chapter.

“Chief of Police” means the Chief of Police of the City of Lodi, or his/her designated representative.

“City Manager” means the City Manager of the City of Lodi or his/her designated representative.

“City Council” means the City Council of the City of Lodi.

“Conviction” or “Convicted” means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

“Client Area” means areas open to customers of the massage establishment.

“Employee” for purposes of this Chapter, the term “employee” shall include independent contractors.

“Health Department” means San Joaquin County Public Health Services.

“Manager” means the person(s) designated by the operator of the Massage Establishment to act as the representative and agent of the operator in managing day-to-day operations with the same liabilities and responsibilities. Evidence of management includes, but is not limited to, evidence that the individual has power to direct, hire, or dismiss employees, control hours of operation, create policies or rules, or purchase supplies. A manager may also be an owner. A manager must meet the standards and qualifications of Section 5.32.030, et seq., to qualify as a manager and obtain a massage technician’s permit.

“Massage” means any method of treating the external parts of the body for remedial, hygienic, relaxation, or any other reason or purpose, whether by means of pressure on, friction against, or stroking, kneading, tapping, pounding, vibrating, rubbing, stimulating, or other manner of touching the external parts of the body with the hands or with the aid of any mechanical or electrical apparatus or appliance with or without supplementary aids such as rubbing alcohol, liniments, antiseptics, oils, powders, creams, lotions, ointments, or other similar preparations commonly used in the practice of massage. **However, “massage” shall not include any massage of the hands, feet or calves given by a manicurist licensed by the California Board of Barbering**

and Cosmetology in connection with a manicure or pedicure performed in an unenclosed area of a salon.

“Massage Establishment” means any business conducted within the City of Lodi where any person, firm, association, partnership, corporation, or combination of individuals engages in, conducts, carries on, or permits to be conducted or carried on, for money or any other consideration, any activity set forth in the definition of “Massage” in this section, and any establishment engaged in, carrying on, or permitting any combination of massage, baths, or health treatments involving massage or baths, shall be deemed a massage establishment.

“Massage Technician” means any person who administers to another person for any form of consideration whatsoever a “massage” as defined in this section. The term “massage therapist” and “massage practitioner” are included within this definition for purposes of this Chapter.

“Massage Technician’s Permit” means the permit required pursuant to the provisions of this Chapter for a Massage Technician.

“Moral Turpitude” means a crime, which infringes upon the moral sentiment of the Community, as distinguished from acts prohibited by law.

“Operator” means all persons who have ownership interest in the Massage Establishment and are responsible for its day-to-day operations.

“Operator’s Permit” means the permit required pursuant to the provisions of this Chapter to operate or manage a massage establishment.

“Owner” means the individual(s) whose name appears on the City business license.

“Person” means any individual, corporation, partnership, firm, association, or other group or combination of individuals of whatever form or character.

“Police Department” means the Police Department of the City of Lodi.

“Recognized School” means any school or institution of learning, which teaches, through state certified instructors, the theory, ethics, practice, profession, or work of massage, which school or institution complies with California Education Code Section 94310 or 94311, and which requires a resident course of study before each student shall be furnished with a diploma or certificate of graduation; or if said school is not located in California, has complied with the standards commensurate with those required in Section 94311 of the California Education Code. Schools offering a correspondence course not requiring actual attendance shall not be deemed a recognized school.

SECTION 2. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 3. No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 4. Severability. If any provision of this ordinance or the application thereof

to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 5. This ordinance shall be published one time in the "Lodi News-Sentinel," a daily newspaper of general circulation printed and published in the City of Lodi, and shall take effect 30 days from and after its passage and approval.

Approved this ____ day of _____, 2008

JOANNE MOUNCE
Mayor

Attest:

RANDI JOHL
City Clerk

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State of California
County of San Joaquin, ss.

I, Randi Johl, City Clerk of the City of Lodi, do hereby certify that Ordinance No. ____ was introduced at a regular meeting of the City Council of the City of Lodi held July 2, 2008, and was thereafter passed, adopted and ordered to print at a regular meeting of said Council held _____, 2008, by the following vote:

AYES: COUNCIL MEMBERS –
NOES: COUNCIL MEMBERS –
ABSENT: COUNCIL MEMBERS –
ABSTAIN: COUNCIL MEMBERS –

I further certify that Ordinance No. ____ was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

RANDI JOHL
City Clerk

Approved as to Form:

D. STEPHEN SCHWABAUER
City Attorney